



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

September 14, 2000

Ms. Nydia D. Thomas
Staff Attorney
Texas Juvenile Probation Commission
P O Box 13547
Austin, Texas 78711

Dear Ms. Thomas:

Enclosed please find a corrected copy of ID# 138999 (OR2000-3507). The original document sent to you inadvertently contained an incorrect address for the requestor. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Precilla Rodriguez
Secretary to:
Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138999

cc: Ms. Debra E. Bylar
Fayette County Juvenile Probation Department
254 North Jefferson
La Grange, Texas 78945
(w/enclosure)



September 12, 2000

Ms. Nydia D. Thomas
Staff Attorney
Texas Juvenile Probation Commission
P. O. Box 13547
Austin, Texas 78711

OR2000-3507

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 138999.

The Texas Juvenile Probation Commission (the "commission") received a request from the Fayette County Juvenile Probation Department for all records regarding a named juvenile in the possession of the commission. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You have submitted an abuse and neglect investigatory file ("exhibit A") and a juvenile board complaint investigatory file ("exhibit B") for our review. We have considered the exceptions you claim and reviewed the submitted information.

We begin by considering your section 552.101 claim. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that a portion of the submitted information is excepted from disclosure under Family Code section 261.201 which provides that "a report of alleged or suspected abuse or neglect" made under chapter 261 is confidential, not subject to public release under the Act, and "may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency." Fam. Code § 261.201(a)(1). Family Code section 261.405 governs investigations in juvenile justice programs and facilities. That section provides as follows:

(a) A report of alleged abuse or neglect in a public or private juvenile pre-adjudication secure detention facility, including hold-over facilities, or public or private juvenile post adjudication secure correctional facility, except for a facility operated solely for children committed to the Texas Youth Commission, shall be made to a local law enforcement agency for investigation. The local law enforcement agency shall immediately notify the Texas Juvenile Probation Commission of any report the agency receives.

(b) The Texas Juvenile Probation Commission shall conduct an investigation as provided by this chapter if the commission receives a report of alleged abuse or neglect in any program, including a juvenile justice alternative education program, operated wholly or partly by:

- (1) a local juvenile probation department; or
- (2) a private vendor operating under the authority of a county juvenile board in accordance with the standards adopted by the commission.

Fam. Code § 261.405.

You explain that the commission received a letter of complaint from a parent whose child was on probation in Fayette County and, as a result of the information contained in the complaint, the commission opened an abuse and neglect investigation under section 261.405(a). You state that the abuse and neglect investigation is currently ongoing. You assert that exhibit A and portions of exhibit B are excepted from disclosure under section 261.201. After considering your arguments and reviewing the submitted information, we conclude that the information described above is confidential under section 261.201 and must be withheld by the commission on that basis.

Next, we consider your claim that the remaining information is excepted pursuant to Government Code section 552.108. Section 552.108 of the Government Code excepts from disclosure certain records of law enforcement agencies and prosecutors. Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). However, an agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.,* Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981).

If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the

administrative agency if its release would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981). You assert that the submitted information relates to an open administrative and law enforcement investigation and that release of the information would interfere with the investigation. In further support of your section 552.108 claim, you state that the documentary evidence contained in both exhibits reveals possible conduct that the agency intends to report or already has reported to the appropriate law enforcement agency pursuant to Family Code sections 261.105(b)¹ and 261.405. Therefore, the commission may withhold the submitted documents from disclosure under section 552.108.

In summary, the commission must withhold exhibit A and the marked portions of exhibit B pursuant to Family Code section 261.201. As explained above, the commission may withhold the remaining submitted information pursuant to Government Code section 552.108.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

¹"The department or designated agency shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect." Fam. Code § 261.105(b).

²As section 552.108 is dispositive, we need not address your section 552.103 claim.


body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138999

Encl. Submitted documents

cc: Ms. Debra E. Bylar
Fayette County Juvenile Probation Department
254 North Jefferson
La Grange, Texas 78945
(w/o enclosures)